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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
SEP 21 2007

OFFICE OF
MANAGING DIRECTOR

Guilford R. Dye, President
Broadcasting Corporation of
Mendocino County
Post Office Box 1056
Ukiah, CA 95482

Re: Request to Waive and Refund Late
Payment Penalty for Station KMKX and
Waive Late Payment Penalty for Station
KWNE for FY 2005 Regulatory Fees
Fee Control No. 0511238835814001
Bill Nos. 0620000059 and 06RE000976

Dear Mr. Dye:

This is in response to two letters we received from you regarding fiscal year (FY) 2005 regulatory fees for Broadcasting Corporation of Mendocino County's station KWNE and for station KMKX, owned by Radio Millennium LLC, but operated under LMA by Broadcasting Corporation of Mendocino County. The first letter, dated January 16, 2006,¹ requests waivers of penalties assessed against KWNE and KNKX for late payment of their FY 2005 regulatory fees.² The second letter, dated January 24, 2006,³ amends the January 16 Request to request refund of the \$186.25 penalty paid on January 20, 2006 for KMKX. Further, you ask that we identify the source of the \$906.25 charge on Bill No. 06RE000976, for which you state you have no record but which appears on the FCC website as delinquent on the account of Radio Millennium LLC.⁴

Our records reflect that on November 21, 2005, we received a \$745.00 payment for KMKX's FY 2005 regulatory fees, and on December 13, 2005, we received a \$1665.00 payment for KWNE's FY 2005 regulatory fees, both arriving subsequent to the

¹ Waiver Request from Guilford R. Dye, President, Broadcasting Corporation of Mendocino County, dated January 16, 2006 (January 16 Request).

² Radio Millennium LLC paid FY 2005 regulatory fees for station KMKX and for WPOQ917 and WME741, two broadcast auxiliary licenses. The FY 2005 regulatory fee for KMKX was \$725.00 and the fee for each of the two auxiliary stations was \$10, for a total of \$745.00. In this letter, we have referred to the total fee obligation of \$745.00, incurring a 25 per cent penalty of \$186.25. Similarly, Broadcasting Corporation of Mendocino County paid regulatory fees for KWNE and a \$10.00 regulatory fee for each of three auxiliary stations, K231AI, WIIB920, and KC25216, and a \$385.00 regulatory fee for a Low Power Television Station, TV Translator/TV Booster. Herein we have referred to the total fee obligation of \$1665.00, incurring a 25 per cent penalty of \$416.25.

³ Amended Waiver Request from Guilford R. Dye, dated January 24, 2006 (January 24 Amended Request).

⁴ *Id.*

September 7, 2005 payment deadline for FY 2005 regulatory fees.⁵ Further, on January 20, 2006, we received a \$186.25 payment for KMKX's late payment penalty. As explained below, your requests for waivers of late payment penalties for KMKX and KWNE and refund of KMKX's penalty are denied. Bill No. 06RE000976 was sent in error after receipt of payment and has been cancelled.

In your January 16 Request, you state that you paid regulatory fees for both KWNE and KMKX on August 25, 2005. You state that you submitted FCC Forms 159 by mail. You state that in October you noticed that your MasterCard had not been charged for the fees and that you phoned the FCC to inquire why, but that you did not receive a return call. You state that you inquired again in November and were advised to resubmit the fees, which you did on November 16, 2005. You state further that your MasterCard account was charged \$745.00 on November 22, 2005 for KMKX's regulatory fees and \$1665.00 on December 2, 2005 for KWNE's regulatory fees. You note that you then received Bills for Collection of penalties for late payment of regulatory fees, dated November 25 and December 14, 2005, respectively.⁶ In your January 24 Amended Request, you state that you received a Notice of Withholding of Action on the application for renewal of KMKX's license for lack of payment of the \$186.25 penalty.⁷ You state further that to avoid inconvenience, you paid the penalty by credit card through the Commission's online fee filer system.⁸ Thus, you amend your original waiver request to include a request for refund of that penalty.⁹

As indicated above, our records reflect that we received the \$745.00 payment for KMKX's FY 2005 regulatory fee on November 21, 2005 and the \$1665.00 payment for KWNE's FY 2005 regulatory fee on December 1, 2005. The Commission's rules are clear that licensees of stations such as KWNE and KMKX are required to pay to the Commission an annual regulatory fee in a timely manner.¹⁰ It is the obligation of the licensees responsible for regulatory fee payments to ensure the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.¹¹ Since 1994, when the Commission implemented section 9 of the Act, which requires the annual assessment and collection of regulatory fees, it has made clear that "[a] regulatory

⁵ *Public Notice, Payment Methods and Procedures for Fiscal Year 2005 Regulatory Fees*, 20 FCC Rcd 12567 (2005).

⁶ January 16 Request at 1.

⁷ January 24 Amended Request at 1 and Attachment, "Notice of Withholding of Action," dated Jan. 13, 2006.

⁸ January 24 Amended Request at 1.

⁹ *Id.*

¹⁰ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Report and Order*, 20 FCC Rcd 12259, 12273-75, ¶¶ 45-50 (2005) (*FY 2005 Report and Order*); 47 U.S.C. §159; 47 C.F.R. §1.1157.

¹¹ *Id.*

fee is untimely paid when it is not received at the lockbox bank by the date we establish for payment.”¹² *In the FY 2005 Report and Order*, the Commission reiterated:

As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, A LATE PAYMENT PENALTY OF 25 PERCENT OF THE AMOUNT OF THE REQUIRED REGULATORY FEE WILL BE ASSESSED ON THE FIRST DAY FOLLOWING THE DEADLINE DATE FOR FILING OF THESE FEES. REGULATORY FEE PAYMENT MUST BE RECEIVED AND STAMPED AT THE LOCKBOX BANK BY THE LAST DAY OF THE REGULATORY FEE FILING WINDOW, AND NOT MERELY POSTMARKED BY THE LAST DAY OF THE WINDOW.

FY 2005 Report and Order at 12275, ¶ 49.

Your request does not indicate or substantiate that you met this obligation. As Commission licensees, Broadcasting Corporation of Mendocino County and Radio Millennium LLC, are charged with the responsibility to familiarize themselves with the Commission’s rules and requirements. The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.” *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), *citing Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Furthermore, as indicated above, the Communications Act of 1934, as amended, requires the Commission to assess a 25 percent penalty on any regulatory fee not paid in a timely manner.¹³

Finally, our records reveal that Bill No. 06RE000976, dated December 22, 2005, for \$906.25, was sent in error, since we already had received a \$745.00 payment for KMKX’s FY 2005 regulatory fees on November 21, 2005.¹⁴ We have cancelled Bill No. 06RE000976 and corrected the records to show that KMKX does not have an outstanding balance due to the Commission for its FY 2005 regulatory fees or associated penalties.

¹² *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Report and Order, 9 FCC Rcd 5333, 5353, ¶ 59 (1994).

¹³ 47 U.S.C. §159(c).

¹⁴ The \$186.25 payment we received on January 20, 2006 satisfied outstanding Bill No. 0620000059 for the penalty for KMKX’s late payment of its FY 2005 regulatory fee.

Guilford R. Dye, President

4.

For the reasons discussed above, we deny your requests to waive the penalties for late payment of KWNE's and KMKX's FY 2005 regulatory fees and to refund KMKX's \$186.25 penalty payment.

Payment of KWNE's \$416.25 penalty is now due. It should be submitted, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If you have any questions concerning this matter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written over a horizontal line.

Mark Stephens
Chief Financial Officer

94.5 KWNE

BROADCASTING CORPORATION
OF MENDOCINO COUNTY

P.O. Box 1056
Ukiah, California 95482
(707) 462-0945
Studio - 1100-B Hastings Road

0511238835814001

Office of Managing Director, Financial Operation
Attn Claudette Pride
Federal Communications Commission
455 - 12th Street S.W.
Washington, D.C. 20554

January 16, 2006

Dear Ms. Pride

On August 25 we paid regulatory fees for our owned KWNE and for KMKX which is owned by Radio Millennium LLC and operated under LMA by our Corporation. The attached form 159 s were submitted by mail.

In October we noticed that our Mastercard account had not been charged the fees and phoned the FCC to enquire why. No one called back.

In November we enquired again and were advised to resubmit the fees. We did so on November 16. Please see letter of that date. Our Mastercard account was charged for the KMKX fees \$745 on November 22 and the KWNE fees \$1665 on December 2.

Shortly later we received "BILL FOR COLLECTION," dated November 25 and December 14 respectively, assessing penalties for late payment of regulatory fees.

We respectfully request that those assessments be cancelled. We submitted the fees in a timely manner and then made efforts to be sure the FCC correctly charged us for them.

Sincerely,


Guilford R. Dye, President

Adams

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
OCT 16 2007

OFFICE OF
MANAGING DIRECTOR

Tamber Ray, Esq.
The Adams Legal Firm, LLC
1474 North Point Village Center, #301
Reston, VA 20194

Re: Sodtown Telephone Company
Request for Waiver of Application Fee
Fee Control No. 070515814005000

Dear Ms. Ray:

This is in response to your request filed May 14, 2007 (*Request*), on behalf of Sodtown Telephone Company (Sodtown) for a waiver of the fee submitted in connection with a request for waiver of the Communications Assistance for Law Enforcement Act (CALEA) assistance capability requirements.¹ Our records reflect that you paid the \$5,605.00 application fee at issue here. For the reasons stated herein, we deny your request.

You recite that "Sodtown is a rural telephone company serving 84 customers in Sodtown, Nebraska – a location not even recognized by the U.S. Census Bureau."² You state that "[w]ith 80 residential customers and four business customers, the . . . fee far exceeds Sodtown's monthly revenue."³ You aver that the fee comprises a large percentage of Sodtown's capital expenditures budget for 2007, "leaving very little for equipment repairs or basic maintenance."⁴ You claim that if Sodtown pays the fee, the company "will be at risk of being unable to pay assigned patronage dividends, to upgrade its facilities to comply with future regulatory requirements, or even to meet ongoing operational expenses[.]"⁵ You allege that if Sodtown is unable to make equipment repairs, customer service will suffer, "contrary to section 109(b)(1)(G) of CALEA, which states that it is '[t]he policy of the United States to encourage the provision of new technology and services to the public' and contrary to the Wireless Communications and

¹ See 47 U.S.C. §1008(b)(1)(G); 47 C.F.R. §1.1105(1); see also *Request* at 1, n.1 (stating that Sodtown filed the request for waiver of the CALEA capability requirements on May 14, 2007).

² *Request* at 1; *id.* at 1 n.4 (citing Letter from Marilyn J. McDermott, Associate Managing Director for Operations, Office of Managing Director (OMD), to Gregory L. Cannon, Esq., at 1 (Sept. 20, 1996) (*September Letter Decision*) (granting waiver of an application fee involving the transfer for one dollar of 19 access lines because "imposition of the filing fee would significantly increase the overall costs of this otherwise nominal transaction and impose a substantial financial burden on . . . a small, independent rural telephone company"); see also *Request* at 1-2 ("the number of access lines, or customers, served by Sodtown has only declined – from 94 in 2000, and 130 at its peak").

³ *Request* at 2.

⁴ *Id.* (footnote omitted).

⁵ *Id.* at 2.

Public Safety Act of 1999 . . . , which was enacted ‘to enhance public safety.’”⁶ In support of your request, you submit financial documentation for calendar years 2005 and 2004.⁷ In response to a Commission staff request, Sodtoun subsequently submitted more recent financial documentation.⁸

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby.⁹ We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of “extraordinary and compelling circumstances.”¹⁰

In establishing its fee program, the Commission recognized that in certain instances payment of a fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its fees in those instances where a petitioner presents a “compelling case of financial hardship.”¹¹ The Commission has stated that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers,

⁶ *Id.* at 3 (also citing 47 U.S.C. §254(b)(3), which provides that consumers in all regions of the United States should have access to telecommunications services at rates that are affordable and reasonably comparable).

⁷ See Request, Attachments (Sodtoun Telephone Company, Ravenna, Nebraska Balance Sheets, December 31, 2005 and 2004; Sodtoun Telephone Company, Ravenna, Nebraska, Statements of Income for the Years Ended December 31, 2005 and 2004; Sodtoun Telephone Company, Ravenna, Nebraska, Statements of Changes in Members’ Equity for the Years Ended December 31, 2005 and 2004; §009.02A6 ETC 5-Year Plan, Sodtoun Telephone Company).

⁸ See Email from Tamer Ray to Joanne Wall (Aug. 15, 2007) (identifying salaries paid for 2006); Email from Tamber Ray to Joanne Wall, Attachment (Sodtoun Telephone Company, Ravenna, Nebraska, Statements of Income for the Years Ended December 31, 2006 and 2005 (Income and Expense Statement)) (Aug. 13, 2007); Email from Tamber Ray to Joanne Wall, Attachment (Sodtoun Telephone Company Salaries Effective 7/20/2007) (July 23, 2007). You also include as attachments to the Income and Expense Statement, specifically, Sodtoun Telephone Company Ravenna, Nebraska, Balance Sheets December 31, 2006 and Sodtoun Telephone Company Ravenna, Nebraska, Statements of Changes in Members’ Equity for the Years Ended December 31, 2006 and 2005.

⁹ See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

¹⁰ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, paras. 70, 87-88 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

¹¹ See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon.*, 10 FCC Rcd 12759 (1995) (*Implementation of Section 9 Reconsideration*).

and the amount of their compensation, or similar information. 10 FCC Rcd at 12761-62.

In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation, or similar items are considered funds available to pay the fees.¹²

The *Income and Expense Statement* that you provide reflecting the company's revenue and expenses for 2006 (which is the most recent financial information that Sodtown has available) indicates that Sodtown had sufficient funds to pay the \$5,605.00 application fee, even before including amounts representing depreciation and compensation paid to directors and officers of Sodtown, which the Commission considers as funds available to pay the fees. We therefore deny Sodtown's request for waiver of the application fee on the basis of financial hardship. Your allegation that payment of the fee might prevent Sodtown from providing quality service and making certain payments and facility upgrades in the future does not support a waiver of the fee given that based upon its most current financial statements, Sodtown is financially able to pay the application fee. The Commission is obligated by Congress to collect the application fees and the burden to obtain a waiver is on the petitioner who must demonstrate an inability to pay the fees contemporaneous with the time he is obligated to pay them. We further find that the *September Letter Decision* you cite does not support Sodtown's request for waiver of the application fee given that in that case, OMD found that imposition of the filing fee "would . . . impose a substantial financial burden" on the licensee. Here, by contrast, we find that Sodtown has the funds to pay the fee and therefore that payment would not prove to be a substantial financial burden to Sodtown. We therefore find that Sodtown failed to establish sufficiently extraordinary or compelling circumstances as to warrant a waiver of the application fee.

You have also requested confidential treatment of the financial documents that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your application fee is received, you will be notified and afforded the opportunity to respond at that time.

¹² See *Implementation of Section 9 Reconsideration*, 10 FCC Rcd at 12761-62.

Tamber Ray, Esq.

4.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a stylized, flowing script.

Mark Stephens
Chief Financial Officer

~~NO WAIVER REQUESTED~~
ENTL# 8565

Confidential – Not for Public Inspection

RECEIVED - FCC

Before the
Federal Communications Commission
Washington, DC 20554

MAY 14 2007

Federal Communications Commission
Bureau / Office

R R O G - 00008565

In the Matter of

Sodtown Telephone Company (499 ID No. 806649)

ET Docket No. 04-295

Request for Waiver of Filing Fee
For Section 109(b) CALEA Waiver Request

To the Managing Director:

Sodtown Telephone Company ("Sodtown"), by counsel and pursuant to Section 1.113(a)(5) of the Commission's Rules,¹ hereby requests a waiver of the \$5,605.00 filing fee required for a request for waiver of the Communications Assistance for Law Enforcement Act ("CALEA") assistance capability requirements.²

The Communications Act gives the Commission authority to "waive ... payment of charges in any specific instance for good cause shown, where such action would promote the public interest."³ Sodtown is a rural telephone company serving 84 customers in Sodtown, Nebraska – a location not even recognized by the U.S. Census Bureau.⁴ Furthermore, the number of access lines, or customers, served by Sodtown has only declined - from 94 in 2000,

¹ 47 C.F.R. § 1.113(a)(5).

² Sodtown filed a Request for Waiver of the CALEA Capability Requirements, in accordance with Section 109(b) of CALEA, with the Commission on May 14, 2007 (ET Docket No. 04-295). A copy of the FCC Form 159 and fee payment, filed with the Commission on May 14, 2007, are attached as Exhibit A.

³ 47 U.S.C. § 158(d)(2).

⁴ The U.S. Census Bureau does not have any population data for Sodtown, NE, online and only has 2000 population data for Buffalo County, NE. See <http://www.census.gov> (last visited May 4, 2007). See also, Letter from FCC Managing Director to U S West Communications, Inc., Sep. 20, 1996, granting a fee waiver upon finding that the fee was large compared to the small number of access lines.

and 130 at its peak.⁵ Sodtown's monthly rate for residential telephone service is \$17.50 while the business rate is \$27.50 per month.⁶ With 80 residential customers and four business customers, the Section 109(b) filing fee far exceeds Sodtown's monthly revenue. Furthermore, Sodtown's net revenues for the years ending December 31, 2005 and December 31, 2004, were \$68,655 and \$63,529 respectively.⁷ The CALEA waiver filing fee represents nearly ten percent of Sodtown's net revenues and does not in any way enhance the service provided by Sodtown. Similarly, Sodtown has budgeted \$7,500 in capital expenditures for the year 2007.⁸ The CALEA waiver filing fee comprises nearly seventy-five percent of that budget, leaving very little for equipment repairs or basic maintenance.

The Commission has stated that it will grant a waiver based on financial need "when the impact of the regulatory fee will affect a regulatee's ability to serve the public."⁹ If Sodtown is forced to spend nearly ten percent of its net revenues and nearly seventy-five percent of its budgeted capital expenditures on a CALEA waiver filing fee, Sodtown will be at risk of being unable to pay assigned patronage dividends, to upgrade its facilities to comply with future regulatory requirements, or even to meet ongoing operational expenses. Accordingly, the filing fee will significantly impact Sodtown's ability to serve the public. Furthermore, no other carriers

⁵ "Sodtown, The Community That Would Not Die," by Irvin Urwiller and Alice Howell, *Buffalo Tales*, Vol. 4 No. 1, Buffalo County Historical Society, Jan. 1981, avail. online at http://bchs.kearney.net/BTales_198101.html (last visited May 4, 2007).

⁶ Sodtown only provides local exchange service.

⁷ See Accountants' Compilation Report dated Aug. 23, 2006 (attached as Exhibit B).

⁸ Sodtown's current switch serves the needs of its customers; therefore, Sodtown has budgeted only for basic equipment maintenance and repairs. See ETC 5-Year Plan, Sodtown Telephone Company (attached as Exhibit C). As shown on the attached 5-Year Plan, Sodtown has only budgeted \$4,000 in capital expenditures for the year 2008 – less even than the filing fee associated with a CALEA waiver request.

⁹ *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12761-62 (1995).

offer wireline service to Sodtown.¹⁰ Therefore, if Sodtown is unable to make repairs to its equipment, Sodtown's customers would be most affected either by an inability to receive telephone service (even if temporarily) or by poor quality telephone service – contrary to Section 109(b)(1)(G) of CALEA, which states that it is “[t]he policy of the United States to encourage the provision of new technology and services to the public” and contrary to the Wireless Communications and Public Safety Act of 1999 (“911 Act”), which was enacted “to enhance public safety.”¹¹ With no other wireline telephone service provider in the community and minimal wireless service, Sodtown's customers are dependent upon receiving quality telephone service from Sodtown for their own well being.

Based on the foregoing, the public interest would be best served by granting the instant waiver request.

Respectfully submitted,

Sodtown Telephone Company

By: 

Tamber Ray
THE ADAMS LEGAL FIRM, LLC
1474 North Point Village Center #301
Reston, VA 20194
(703) 738-4812 (ph)

Its Counsel

May 14, 2007

¹⁰ Wireless telephone service is available to some parts of Sodtown but the service is not always reliable.

¹¹ 47 U.S.C. § 1008(b)(1)(G); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, enacted Oct. 26, 1999. *See also*, Section 254 of the Telecommunications Act of 1996, which provides that consumers in all regions of the United States, including consumers in rural, insular, and high-cost areas, should have access to telecommunications services at rates that are affordable and reasonably comparable. 47 U.S.C. § 254(b)(3).

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
OCT 16 2007

Adana

OFFICE OF
MANAGING DIRECTOR

Thomas Gutierrez, Esq.
Lukas, Nace, Gutierrez & Sachs, Chtd.
1650 Tysons Boulevard
Suite 1500
McLean, Virginia 22102

Re: Wireless America, LLC
Request for Waiver of Application Fees
Fee Control No. RROG-07-00008429

Dear Mr. Gutierrez:

This is in response to your request dated March 28, 2007 (*Request*), on behalf of Wireless America, LLC (Wireless) for a waiver of the application fees associated with a request for an extension of time to comply with the construction requirements for 476 Multiple Address System (MAS) authorizations under section 101.1325(b) of the Commission's rules, 47 C.F.R. §101.1325(b). Our records reflect that you have not paid the \$80,920.00 in total application fees at issue here (\$170.00 per call sign). For the reasons stated herein, we deny your request.

You recite that the spectrum at issue "is associated with geographic area licenses awarded by the Commission via competitive bidding five years ago."¹ You assert that "[t]he theory behind the varying fees that the Commission provides for in its schedule is that the greater the effort required, the higher the associated fee should be."² You maintain that although the Commission generally does not impose filing fees on the assignment or transfer of licenses that were granted pursuant to competitive bidding, "for no reason that has ever been articulated publicly by the Commission . . . there are a handful of services[, including MAS,] for which filing fees are required for assignment or transfer applications, even when the licenses at issue were awarded pursuant to competitive bidding."³ You assert that even though "these services existed prior to the advent of auctions, and had filing fees associated with them . . . [,] that fact in no way supports the disparate treatment provided to geographic area licenses awarded via auction[.]"⁴ You

¹ *Request* at 1, n.2.

² *Id.* at 2; *see also id.* at 4-5 ("the rationale behind filing fees is that those who benefit from the application of Commission resources that directly benefit only a limited and clearly defined group should compensate the Commission for the cost of such efforts"); *id.* at 5 ("the associated application fees were intended only to make the Commission whole for the cost of its efforts").

³ *Id.* at 2.

⁴ *Id.* at 2, n.4.

claim that the application fees at issue here constitute “a far greater percentage of license value than would be the case with more valuable licenses.”⁵

You claim that the fee is “extreme when viewed in the context of other, similarly situated services.”⁶ You maintain that although “argument could be raised that each transfer or assignment proceeding involves somewhat different facts, or that the Commission’s rules simply provide for different treatment based upon there being different services[, neither of those distinctions justifies disparate treatment here.”⁷ You maintain that the “request is not particularly complex . . . [and] that there is but a single request to be analyzed once, and . . . once . . . completed, it can be immediately and effortlessly applied to each of the other call signs in the single application at issue.”⁸

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby.⁹ We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of “extraordinary and compelling circumstances.”¹⁰

We find that you have failed to establish good cause for waiver of the application fees. To begin with, we reject your basic premise that the fees in question may only reflect the cost of processing the application. Specifically, regarding your assertion that the request for extension of the construction deadlines is noncomplex and that the cost of processing the application does not correspond to the associated application fees, it is well-established that “there is ‘no justification in the statute or legislative history for apportioning fees in accordance with the actual work done on any particular application.’”¹¹ Thus, Congress and the Commission have made clear that the existence

⁵ *Id.* at 2.

⁶ *Id.* at 4.

⁷ *Request* at 4.

⁸ *Id.* at 5 (asserting that “[t]he first, and apparently most resource-intensive, component of the process is an analysis of the contemplated request . . . the other cost component . . . involves altering the Commission’s ULS to reflect its action on the application[.]”).

⁹ See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

¹⁰ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958 (1987) (1987 Report and Order); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003) (*Sirius*).

¹¹ *PanAmSat Corporation*, 19 FCC Rcd 18495, 18498 (2004); see also *id.* at 18497 (“consistent with congressional intent and established precedent, application fees are not adjusted to reflect the actual work done on any particular application”); see also *Lockheed Martin Corp.*, 16 FCC Rcd 12805, 12807 (2001) (*Lockheed*); see also 1987 Report and Order, 2 FCC Rcd at 949 (stating that “processing costs were but one factor in the rough calculus that resulted in the legislated fees”); see also *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of*

of “compelling and extraordinary circumstances” – not the amount of resources expended in an individual case – should be the touchstone for determining whether a refund should be granted. We collect fees based on a schedule established by Congress to recover a portion of the expenses we incur in processing applications.¹² Each applicant is expected to pay the statutory filing fee appropriate to the type of application at issue.¹³ We therefore do not consider it extraordinary or compelling that the cost of processing the application at issue allegedly does not correspond to the associated application fees, nor do we expect that the application fees will necessarily reflect the work done on the applications. Moreover, despite your allegation that the extension request is not complex and requires little analysis, this does not obviate the necessity for a full and substantive review by Commission staff of each application.¹⁴ Wireless’s further allegation that the application fees constitute “a far greater percentage of license value than” other “valuable licenses” is equally unpersuasive. The prices paid at auction for spectrum relative to the application fees associated with requests for waiver of the construction deadlines involving that spectrum are irrelevant to whether a waiver of the statutorily-mandated application fees is in the public interest, particularly given the variable and unpredictable circumstances driving bidding decisions and the valuation of spectrum.¹⁵ Accordingly, we find that your request does not warrant a waiver of the application fees on these grounds.

Your assertion that there is “no reason”¹⁶ to justify the Commission’s disparate treatment in imposing application fees involving the transfer and assignment of licenses awarded by competitive bidding does not support your request for waiver of the instant filing fees given that the application at issue involves an application to extend the section 101.1325(b) construction deadlines and not a transfer or assignment application. We note, moreover, that Congress established the fee for non-routine requests for waiver of the MAS application fees on a per station basis (such as the request at issue here) in section 8(g), *Schedule of Application Fees, Private Radio Services*, (3)(g)(ii) of the

1985, 3 FCC Rcd 5987 (1988) (recognizing that “the amount of a fee represents the Commission’s estimate, accepted by Congress, of the average cost to the Commission;” declining to “make individualized determinations of the ‘appropriate fee,’” although the actual cost may be more or less in individual situations; and indicating an intent to “levy the fee as determined by Congress . . . except in unusual cases in which the public interest requires otherwise.”).

¹² *Sirius*, 18 FCC Rcd at 12554.

¹³ *Id.* at 12555.

¹⁴ See, e.g., Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC, to Ruth Milkman and Stephen J. Berman (Mar. 10, 2005) (rejecting contention that applicant should pay only one filing fee for 116 allegedly identical requests for relief).


¹⁵ Moreover, you have not demonstrated that payment of the aggregate fees constitutes a hardship for Wireless.

¹⁶ *Request* at 2.

Communications Act.¹⁷ As the Commission has pointed out, "Congress has not granted the Commission the authority to amend the application fee schedule."¹⁸ The Commission had no authority to impose fees in cases where section 8 of the Act does not include these services in the statutory fee schedule. Given that Congress did not elect to assess application fees for certain other services, the fact that those services may be subject to competitive bidding does not persuade us to waive the rule provisions governing the application at issue here. Further, as the Commission has stated, "our waiver authority is not intended to correct perceived inequalities in the statute itself, but for good cause shown in individual situations."¹⁹ For all these reasons, we therefore find that Wireless has not shown sufficiently extraordinary or compelling circumstances as to warrant a waiver of the fees associated with its application for an extension of the section 101.1325(b) construction deadlines. Accordingly, we deny your request.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁷ 47 U.S.C. §158(g), *Schedule of Application Fees, Private Radio Services*, (3)(g)(ii); see also 47 C.F.R. §1.1102(5)(r).

¹⁸ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Third Report and Order*, 9 FCC Rcd 7988, 8127 (1994).

¹⁹ *Lockheed*, 16 FCC Rcd at 12807.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of:

Request for Waiver of Filing Fees

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PETITION FOR WAIVER OF FILING FEES

On behalf of Wireless America, LLC ("Wireless America"), MilkyWay Communications, LLC ("MilkyWay"),¹ by counsel and pursuant to Section 1.3 and 1.1117 of the Commission's rules, hereby request a waiver of the filing fee of \$80,920.00 provided in Section 1.1102 with respect to the request for an extension of time to construct the spectrum set forth in Exhibit A.²

I. Introduction and General Background

The Commission's filing fees schedule for applications of this nature (i.e. for the extension of Multiple Address System ("MAS") construction requirements) is set forth in 47 C.F.R. Section 1.1102. Given that MAS licenses are here involved, the Commission's schedule

¹ MilkyWay assigned to Wireless America a disaggregated 6.25 KHz of spectrum with respect to each of MilkyWay's 476 MAS licenses (see ULS File No. 0002561510 and Exhibit A attached herewith). The transaction was consummated on March 23, 2007 and the Commission was timely notified of such consummation (see ULS File No. 0002963915). Because the Commission's ULS system has not been updated to reflect Wireless America as the licensee of the spectrum set forth in Exhibit A, the subject extension request is being filed in the ULS by MilkyWay.

² The spectrum set forth in Exhibit A is associated with geographic area licenses awarded by the Commission via competitive bidding five years ago.

provides for a filing fee payment of \$80,920.00!³ Waiver of that very substantial fee is hereby requested. Good cause for the relief sought is provided below.

The Commission's filing fees are generally designed to compensate the Commission for time and resources that need to be expended in order to process an application. See generally, e.g. In the matter of Amendment of the Commission's rules Relating to the Schedule of Fees, 28 FCC 2d. 139 (1971). The theory behind the varying fees that the Commission provides for in its schedule is that the greater the effort required, the higher the associated fee should be. *Id.*

The Commission has also (wisely, and properly) determined that, for the most part, there are no filing fees associated with the assignment or transfer of licenses that were awarded pursuant to competitive bidding. See 47 C.F.R. § 1.1102. This makes sense in that the licenses awarded pursuant to competitive bidding have already been paid for. Unfortunately, and for no reason that has ever been articulated publicly by the Commission or any operating bureau, there are a handful of services for which filing fees are required for assignment or transfer applications, even when the licenses at issue were awarded pursuant to competitive bidding. Without known exception, these are the relatively low-cost services such as 218-219 MHz, paging, and MAS, where application filing fees constitute a far greater percentage of license value than would be the case with more valuable licenses.⁴

³ The filing fee per call sign is \$170.00. ($\$170.00 \times 476 = \$80,920.00$).

⁴ Many, if not all, of these services existed prior to the advent of auctions, and had filing fees associated with them. Whereas that fact in no way supports the disparate treatment provided to geographic area licenses awarded via auction, it is unclear whether that nexus may have contributed to them being subjected to extra costs. In any event, the licenses here at issue were all awarded via competitive bidding, and have been bought and paid for in full.

II. The Waiver Standard

The Commission has authority to waive its rules whenever there is "good cause" to do so. 47 C.F.R. §§ 1.3; 1.925. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969) ("WAIT Radio"). As further explained in WAIT Radio, the Commission is charged with administration of its responsibilities consistent with the "public interest." That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the "public interest" for a broad range of situations, does not relieve it of an obligation to seek out the "public interest" in particular, individualized cases. Waivers are a legitimate vehicle to accomplish this. In fact, the Commission's right to waive its rules is not unlike an obligation in that it is a *sine quo non* to its ability to promulgate otherwise rigid rules. It is the necessary "safety valve" that makes the system work. See, WAIT Radio at 1157, 1159.

A waiver of the Commission's rules applicable to wireless services is appropriate whenever a party demonstrates either (1) that the underlying purpose of the rule would not be served or would be frustrated by its application in the instant case, and that grant of a waiver would be in the public interest, or (2) in view of unique or unusual factual circumstances in the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.925(b)(3).

Section 1.1117 of the rules provides added guidance with respect to when application filing fees may be waived. In particular, fees may be waived whenever "good cause is shown and where a waiver or deferral of the fee would promote the public interest." As demonstrated below, all of these criteria are here met.

III. Good Cause Exists for a Waiver

The filing amount of \$80,920.00 is extreme when viewed in the context of other, similarly situated services. In stark contrast is the proceeding in which NextWave Telecomm, Inc. ("NextWave") assigned one portion of its New York BTA PCS license to Cingular Wireless, LLC. There, the consideration was approximately \$1 Billion and there were no filing fees. 19 FCC Rcd 2570 (2004). Similarly, when NextWave later sold several licenses to Verizon Wireless for approximately \$3 Billion, no filing fees were there required either. 19 FCC Rcd 23.797 (2004).

To be sure, argument could be raised that each transfer or assignment proceeding involves somewhat different facts, or that the Commission's rules simply provide for different treatment based upon there being different services. But neither of those distinctions justifies disparate treatment here. Reviewing courts have been particularly clear that, given that there will virtually always be some difference in facts between any two cases, mere differences do not, in and of themselves, justify disparate treatment. Rather, only differences that are "relevant to the purposes of the Federal Communications Acts" can support discriminatory treatment. Melody Music Inc. v FCC, 345 F2d 730, 733 (D.C. Cir. 1965). Here, there are none. Thus, there is no justification here for the imposition of a huge filing fee. The removal of such an impermissible difference in treatment itself constitutes "good cause" for grant of the instant waiver. Similarly, disparate treatment (as currently exists) would be inconsistent with established Commission efforts to eliminate, rather than to perpetuate, different treatment of different services that reflects nothing more than historical accident. See, e.g. 47 C.F.R. § 1.900 et seq.

There is a second, wholly independent, good cause justification for grant of the waiver. As discussed above, the rationale behind filing fees is that those who benefit from the application

of Commission resources that directly benefit only a limited and clearly defined group should compensate the Commission for the cost of such efforts. The provision of such services was never intended to constitute a Commission "profit center." Rather, the associated application filing fees were intended only to make the Commission whole for the cost of its efforts.

There are two general cost elements relating to processing an application requesting an extension of time to construct. The first, and apparently most resource-intensive, component of the process is an analysis of the contemplated request. Here, the request itself is not particularly complex, especially in light of the types of requests for extension of time to construct that has been previously presented to the Commission. Yet, we do not argue for relief on that basis alone. Rather, we note that there is but a single request to be analyzed once, and only once. Once that analysis has been completed, it can be immediately and effortlessly applied to each of the other call signs in the single application at issue. The application filing fee of \$170.00 per call sign, which we stipulate may be appropriate for a single call sign, is simply not also appropriate for each of 476 call signs included in a single application.

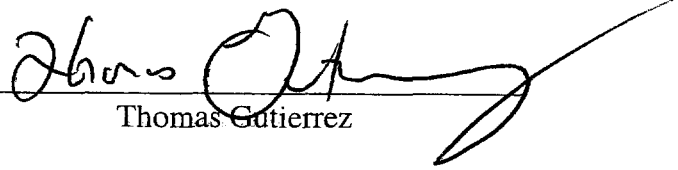
The other cost component of application processing involves altering the Commission's ULS to reflect its action on the application. Whereas this has always been a very small portion of overall processing costs, with automation it has now become a minute portion of it. As such, it in no way supports imposition of the filing fee here at issue!

IV. Conclusion

For all of the above reasons, law, equity and common sense all support grant of the waiver requested herein.

Respectfully submitted

WIRELESS AMERICA, LLC

By: 
Thomas Gutierrez

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March 28, 2007